

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 296

April 23, 1965

COMMERCIAL DOMICILE: SITUS OF INTANGIBLES

Syllabus:

Taxpayer is a European corporation qualified to do business in California. Its only operations are the manufacture of chemicals at its California plant. All income from operations has been reported on its returns without any allocation.

Taxpayer's stock is publicly held and all but an insignificant portion is held by residents of Europe. All of its officers (except an assistant secretary who is a California attorney) and directors reside in Europe. It has an European office at which it has its books, records, accounts, and staffs performing legal and technical services. It states that, in common with other European companies, it employs a secretarial company to perform administrative work. It employs a mining engineering firm to render technical services and advice. The expense of maintaining its European headquarters in 1961 amounted to several hundred dollars.

Taxpayer states that its board of directors meets in London at least twice monthly and considers all of the problems of the company. It states that positive management and control of all of its interests at home and abroad is exercised from Europe by correspondence, cable and in person. This broad statement seems fully substantiated by the information presented by the taxpayer. It does appear that the California management's activities not directed by Europe are limited to supervising routine plant operations. Information submitted supports the taxpayer's further statement that no decisions of consequence are made by its California employees or management without authority from Europe.

The taxpayer owned all of the stock of three subsidiary California corporations. X held a small amount of California real estate and was inactive. Y engaged in mining operations in California. The third subsidiary, Z, was acquired for the purpose of purchasing and exploiting phosphate fields in the Mid West. This Company had no activity in California. Taxpayer states that its local office had no jurisdiction over the operations of Z. It states that the business of Z is managed directly from Europe and that it reports on all matters directly to Europe. It adds that as required by European law the shares of Z as well as those of its other subsidiaries are held in escrow in Europe.

Proposed assessments were issued for the income years 1956 and 1957,

including in the measure of the tax gain from the sale of shares in Z, dividends received from that company and interest on London bank deposits. The assessments were issued on the theory that the taxpayer had its commercial domicile in California.

Do these intangibles in question have a situs in California so that the income therefrom is includible in the measure of the tax?

In the absence of evidence to the contrary, it will be presumed that intangibles have their taxable situs at the domicile of the owner, in this case, Europe. An exception to this "mobilia" rule is recognized where the intangibles have acquired a "business situs" because they are employed as capital in a state or country apart from the domicile, or the possession and control of the intangibles is localized in connection with a business carried on in such other state or country. An extension of the business situs doctrine, or an exception thereto, is found in the doctrine of "commercial domicile" which holds that intangibles are taxable by the state in which the corporation has its principle office or place from which its business is managed or controlled. These principles are recognized in our Reg. 23040(a).

The facts are to the effect that the California business of the taxpayer is managed and controlled from its office at its legal domicile. The facts indicate this to be its principal office. The facts further show that the stock in Z is not employed as capital in California and that possession and control of such stock is not localized in connection with any business carried on here. I therefore conclude that the intangibles in question do not have a situs for taxation in this state.

We have here a situation comparable to that present in Wheeling Steel Corp. v. Fox, 298 U.S. 193, where commercial domicile was found to be in a state although the major portion of the corporation's business was conducted in another state.

The management and control emanating from Europe is considerably more than the mere holding of director's meetings, the formal approval of acts done by California management or the making of ultimate final decisions. The principal income sought to be taxed is dividends from and gain on sale of stock in Z, the subsidiary of the taxpayer. The facts establish that the management of the business affairs of this corporation was wholly unconnected with and were separate from any activities of the taxpayer in California.